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ABSTRACT

The Immigration Reform and Control Act of 1986, which provides legalization to certain undocumented aliens and imposes sanctions on employers who knowingly hire undocumented workers, affects school districts in their capacity both as employers and as providers of services to children and families who may be seeking to legalize their immigration status. School districts must design personnel policies that comply with the bill's employer sanctions provisions but that do not violate the anti-discrimination provisions in the new law and in the Civil Rights Act of 1964. It is likely that school personnel will receive many questions and will want to become informed about the legalization process, develop a listing of agencies providing approved assistance, and refer individuals to these agencies for specific information and assistance. School districts will need to respond to increased demands for adult classes in English and United States Civics and Government and to stay informed of state and federal assistance for these programs. Finally, school personnel, parents, and community members should understand that enforcement of the immigration law is the responsibility of the Immigration and Naturalization Service and not of the schools. (JHZ)

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THE NEW IMMIGRATION ACT: WHAT EDUCATORS OUGHT TO KNOW

By

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March 5, 1987

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MEMORANDUM

TO: La Raza Education Network
FROM: Lori S. Orum, Director
Innovative Education Project
DATE: March 5, 1987

RE: **THE NEW IMMIGRATION ACT: WHAT EDUCATORS OUGHT TO KNOW**

I. INTRODUCTION

On November 6, 1986, President Reagan signed into law the Immigration Reform and Control Act of 1986. The Act, popularly known as the Simpson-Rodino Act, provides legalization to certain undocumented aliens and imposes sanctions on employers who knowingly hire undocumented workers.

Schools, all those who work within them, and the children and families they serve, will be affected by this new law. The Immigration Act has implications for school districts in their capacity both as employers and as providers of services to children and families who may be seeking to legalize their immigration status. School board members, administrators, teachers and all those concerned with school systems should be well informed about the various provisions of this law in order to ensure that schools:

1. Design personnel policies which comply with the employer sanctions provisions in the bill but which do not violate the anti-discrimination provisions in the new law and in the Civil Rights Act of 1964;

2. Assist students and their families and district employees who may be seeking to legalize their immigration status;

3. Respond to increased demands for adult classes in English and U.S. Civics and Government; and

4. Realize that enforcement of the immigration law is the responsibility of the Immigration and Naturalization Service (INS) and <u>not</u> school officials.

Above all, school systems and those who work within them must ensure that school policies not violate children's right to a public education regardless of immigration status as upheld by the Supreme Court in Plyler v. Doe (1982).

Regulations to implement the new legislation are still being developed, so there are still a number of unanswered questions about INS policies and practices in implementing the bill. Over the next few months, school board members should make sure that the board and the school attorney are briefed both by the INS and by representatives of organizations monitoring the implementation of the law, to assure a thorough understanding of their rights and obligations. Key administrative staff will also want to be present at these briefings. It would also be appropriate to have one or more teacher representatives and PTA or bilingual advisory committee representatives present at these briefings and discussions. This memorandum offers some basic facts about the ways in which the new immigration law affects school districts, and suggests ways that school board members, administrators, teachers and community members concerned with education can work together to meet the challenges posed by this new law.

II. PERSONNEL POLICIES

Under the Immigration Act employers may be fined and/or imprisoned for knowingly hiring undocumented workers. School districts are considered to be "employers" under the Act and therefore must comply with the "employer sanctions" provisions in the legislation or face penalties. In order to deter employers from discriminating against persons on the basis of citizenship status or national origin, the Act also contains anti-discrimination provisions which enable citizens and "intending citizens" to seek legal redress if they feel they have been victims of unlawful discrimination.

The first six months after the bill was signed into law are considered to be an "education period." INS should now be informing employers of their responsibilities under the new law. Board members and administrators will want to make sure that the district personnel officer and school attorney have been advised by INS as to specific requirements for employment verification systems. School employees should also have an understanding of requirements in the legislation which may affect the district's hiring and other personnel policies. Basically, the sanctions provisions work as follows:

- Employees hired before November 6, 1986 are covered by a **grandfather clause** and employers do not need to require them to provide proof of legal immigration status. Employers do not face a penalty for having hired an undocumented worker before this date.

- For hires which occur after November 6, 1986, employers are required to check for legal immigration status and to keep records of such efforts to check documents. Checking immigration status will involve an employer's

asking for and looking at documentation, with acceptable documents specified by INS. Employers need not be responsible for verifying the authenticity of such documents. If the documents appear "reasonably on their face to be genuine," then the employer has complied with the law. Employers must also establish a system to monitor the ongoing eligibility of employees to work.

- Employers who knowingly hire undocumented workers after November 6, 1986, or who fail to request some evidence of eligibility to work from new hires, may be subject to civil fines. Those who are found to engage in a "pattern and practice" of hiring undocumented workers may be fined and imprisoned.

School personnel should be aware that citizens and permanent resident aliens may also need assistance in documenting authorization to work. Most U.S. citizens do not carry proof of citizenship. Some may not have copies of birth certificates at home, and others may have difficulty in obtaining them. This is particularly true for individuals born at home, and individuals whose records have been lost, or who were born in U.S. territories or dependencies and may have difficulty in obtaining records. Schools may want to provide information on how to obtain copies of birth certificates or other acceptable documents to both employees and students.

It is important that personnel policies be reviewed to ensure that the district complies with work eligibility verification requirements contained in the legislation. However, school systems should take great care to design personnel policies which apply equally to all applicants and employees and which do not discriminate or give the appearance of discrimination against individuals based on national origin or citizenship status. For example, all new hires, not just those who are bilingual, have accented English or "foreign-sounding" surnames, must be asked to produce documentation of legal status. Once an employee has complied with the verification requirements, the employer is prohibited from requesting additional documents. Additionally, districts which set up different hiring procedures for programs which employ significant numbers of language-minority staff (i.e., bilingual education programs) are probably setting themselves up for a lawsuit.

III. ASSISTING WITH LEGALIZATION

One of the most highly publicized features of the new immigration legislation is that it will allow some undocumented aliens the chance to "legalize" their immigration status. Basically, those eligible are individuals who have resided continuously in an undocumented status in the United States since January 1, 1982, and who are otherwise admissable as immigrants. Congress included this provision because legalization appears to be the most cost-effective and practical solution to the problems of having a "subclass" of individuals who are not fully protected by the law. The legalization provisions are designed to bring these individuals into the mainstream, and minimize situations where persons are exploited in the

workplace or are fearful to report crimes, seek treatment for illnesses or become involved with public institutions such as the schools.

Although the bill was signed last November, the first six months are being considered a planning period for legalization, and the INS is in the process of developing regulations. Applications for legalization are expected to be available in May for some classes of aliens and in June for all others. Individuals who qualify for legalization must assemble all relevant documentation and first apply for temporary residence for a period of one year. After that, they may adjust to permanent resident status if they meet other requirements set forth in the bill. Those requirements include demonstrating a minimal understanding of ordinary English and knowledge and understanding of the history and government of the United States. If applicants cannot demonstrate this knowledge, then they must be "satisfactorily pursuing a course of study recognized by the Attorney General" to meet these requirements. A waiver of these provisions may be granted for applicants over 65 years of age.

There are also two groups of farmworkers who will be allowed to adjust their status under the new legislation. The first group consists of individuals who have worked at least 90 days in agriculture from May 1985 through May 1986. Initially they will apply for temporary resident status and will be eligible to adjust to permanent status after two years if they meet other eligibility criteria. The second group of farmworkers -- those who have worked at least 90 days in agriculture over the last three years -- may apply for temporary resident status and adjust to permanent status after one year, assuming compliance with other eligibility criteria.

It is likely that school personnel -- especially teachers and teacher aides -- will receive many questions about the legalization process. While regulations are still being developed, the law stipulates that community-based agencies be designated to serve as a buffer between aliens and the INS. These agencies, to be known as Qualified Designated Entities (QDEs), will be certified to provide counseling and assistance in the preparation and submission of applications. They will also represent the applicant in the legalization process. In this manner, those undocumented persons who may not qualify for legalization -- and it is expected that many will not -- need not expose themselves to the INS. School personnel will want to become informed about the legalization process, develop a listing of QDEs in their area, and refer individuals to these agencies for specific information and assistance. Individuals should <u>not</u> be referred directly to the INS.

In order to qualify for legalization, each family member must be able to document eligibility and continuous residence. This can pose a tremendous challenge to undocumented individuals and families, who have typically tried to avoid establishing a "paper trail" during their residence in the United States. Some individuals have shared living accommodations with others and may not have rent receipts bearing their name. Some may have worked or lived under an assumed name. Other families face the added hurdle of having a wage erner who worked for an employer who paid them in cash, "under the table" and did not withhold taxes or FICA from wages. Gathering records to document

eligibility for legalization may be a complicated and difficult process for many families who otherwise appear to meet the requirements in the law.

Schools may play a critical role in the process of helping families document continuous residence, since school attendance and other records can be used by children and their parents to document residence. Many schools are already receiving a substantial number of requests for copies of these records. Schools should review their records and procedures for granting copies of those records so that they are prepared to assist children, families and employees who may be seeking to document residency for legalization applications on a timely basis.

School personnel and parents should be aware that while the Immigration Act limits the eligibility of persons who have legalized their status to receive certain federal entitlements or benefits, these restrictions do not affect children's eligibility for such programs as Chapter 1, the National School Lunch Act, the Child Nutrition Act, Vocational Education or Head Start. INS and QDEs will have additional information on these provisions of the law, and the school board and administrators should request a briefing on the benefits issue as well so that they do not wrongfully exclude children from participation in educational programs. It is equally important that parents and community education advocates understand these provisions of the law so they can ensure that immigrant children receive the services to which they are entitled.

IV. RESPONDING TO INCREASED DEMANDS FOR ADULT EDUCATION

Since the second step in the legalization process requires applicants to demonstrate knowledge of English, U.S. history and government, schools can expect an increased number of requests for these classes. Some communities will be able to absorb the increased demand in existing programs; however, in many communities adult English as a Second Language (ESL) programs already are so overcrowded that many individuals are turned away each year. Other areas, particularly rural communities, may not have existing public or low-cost programs for adults. School districts operating adult education programs are likely to see an increase in demand. School board members and administrators should review the definitions developed by the INS and the Attorney General concerning programs which are appropriate courses of study for those seeking legalization. If adult education programs are operated by an agency other than the school district, the schools may still receive requests for adult services -- particularly if the regular program is overcrowded and waiting lists are long. In any event, school personnel are sure to receive questions about the location and availability of programs and should have information in order to refer parents to appropriate services.

If a school district has not previously operated family-wide approaches to second-language learning, this may be a good opportunity to begin some new programs which are designed to not only provide parents with English-language skills but also facilitate parent involvement in their children's education. The district federal programs coordinator will want to become familiar with the Family English Literacy Program (FELP), a small,

relatively new program within the federal Bilingual Education Act which provides funding for coordinated parent-child learning programs. Another bill, the English Proficiency Act, currently pending before Congress, would provide grants for English literacy training for limited-English proficient adults. Should this bill be enacted, additional categorical funds will be available. VISTA is establishing a new Literacy Corps program which may be able to provide volunteers to community literacy programs; check with the state ACTION office for further information and application requirements.

Some states are already creating state programs to provide additional funding for adult English programs, so school personnel should check developments in state legislatures. Also, local school boards, administrators, teachers and their professional associations can be among the most powerful advocates for increased support for adult English, history and government courses. Individuals concerned with inadequate levels of funding and/or inappropriate targeting of resources in these areas can contact their legislators directly and request assistance from any state or national organizations with which they are professionally affiliated.

One of the most important potential sources of revenue for these courses is contained in the immigration bill itself. The bill provides for states to be reimbursed for funds expended for the provision of educational services to legalized persons. Local school districts concerned about these provisions should contact their state departments of education to learn of any state plans to provide additional adult educational services -- and to be advocates for expanded state efforts in this area.

V. ENFORCEMENT

School personnel, parents and community members should understand that enforcement of the immigration law is the responsibility of the INS and not of the school district nor local school officials. The employer sanctions provisions in the new legislation are the primary new enforcement mechanism in the legislation. **Nothing in the law requires or authorizes school officials to check the documentation of students enrolling in the school district. In fact, current federal policy does not authorize anybody but INS to enforce immigration laws.**

School boards should ensure that district policy clearly forbids any "vigilante" action on the part of local staff who may decide to require documentation of immigration status to enroll children or their parents in classes. Such actions conflict with established case law stipulating that children residing within the school district have a right to a public education regardless of immigration status and may make the district vulnerable to lawsuits. Additionally, immigration law is very complex and "apparently-illegal" individuals often have rights of which those unfamiliar with the law may be unaware. Under no circumstances should school district staff presume to enforce the immigration laws.

INS agents must comply with the law in their enforcement efforts. Thus, INS agents should be allowed on school property only with a specific warrant authorizing their presence and naming specific individuals. School records are likewise considered private and personnel should not make them available to INS agents without a similar warrant.

Some school districts have reported that INS agents have staged "raids" just outside school property, targeting mothers or babysitters bringing young children to school. Such raids deter undocumented parents from sending their children to school, can create unsafe situations where small children are sent unaccompanied to or from school, and limit the involvement of parents with the schools. If such raids are a practice in a given community, board members, school personnel and parents may want to contact the INS district director to inquire whether this is, in fact, INS policy, and to register a public protest against such activities. It is also probably a good idea to have staff document their interactions with INS in the event that the district needs to challenge INS policy or actions and to protect the district's interests.

VI. AN AGENDA FOR EDUCATORS

School board members, administrators, teachers and parents can take a variety of actions to ensure that the immigration law is implemented fairly and to assist children and families seeking legalization. School districts can play a unique role in helping individuals move out of the shadows of undocumented status and marginal participation in American life and into the mainstream.

Since board members are ultimately responsible for the policies and practices of the school district, board members should play an active role in ensuring that the school district complies with all the provisions in the new immigration law. Some school boards have begun to form district-wide committees, composed of board members, administrators, teachers and parents to study the new legislation, review existing district policies and recommend new programming or services which may be needed. This kind of coordinated approach has great promise, not only in protecting the district from violations of the legislation, but also in determining ways in which schools can help undocumented children and families.

The following suggestions are offered as an agenda for school personnel who want to see their districts comply with both the letter and spirit of the new legislation:

1. Invite representatives from the Immigration and Naturalization Service (INS) and organizations monitoring the implementation of the legislation to provide a briefing on the law to the school board and key administrative personnel, including the school attorney and chief personnel officer.

2. Schedule briefings for district employees on the new legislation. Include information about the district's responsibilities as an employer and as a provider of services to the community.

3. Compile a listing of local Qualified Designated Entities (QDEs) and make sure that local school personnel know how to refer legalization applicants to local QDEs for counseling and assistance.

4. Prepare to assist individuals in documenting their residency by providing copies of school records. Make sure that personnel office and central office staff understand the importance of providing timely copies of requested records.

5. Sponsor or co-sponsor with other community agencies a series of public information meetings on the new immigration legislation.

6. Review existing personnel policies and recommend changes to ensure compliance with employer sanctions provisions.

7. Review any proposed personnel policy changes to ensure that they comply with the anti-discrimination provisions in the law and are not used to discriminate against persons on the basis of citizenship or national origin.

8. Examine ability of existing adult English as a Second Language (ESL) and U.S. History and Government classes to meet the demand for adult services. Explore feasibility of expanding services (or offering services if the district does not now provide for such instruction.)

9. Contact the state department of education about procedures for reimbursement for educational expenses for legalized persons. If the state does not have a plan for increased services, be an advocate for such services.

10. Make sure that the federal programs coordinator is familiar with all existing federal sources of funding for adult English and government courses. Be an advocate for pending programs which would provide additional funds or more appropriate targeting of resources.

11. Contact state and federal elected representatives to inform them of the need for additional resources to help adults learn English.

12. Compile a listing of community agencies which are knowledgeable about the new immigration legislation and investigate the possibility of having these agencies distribute information on legalization through the school district.

For general information about the Immigration Act and schools, contact Lori S. Orum in the Council's Los Angeles Program Office, (213) 489-3428. For information about the Immigration Reform and Control Act of 1986 and its wider implications for Hispanics, contact the Charles Kamasaki, the Council's Director of Policy Analysis, in La Raza's Washington, D.C. office, Twenty F Street, N.W., Second Floor, Washington, D.C. 20001, (202) 628-9600.